

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

IN RE:	*	
PNC BANK, NATIONAL		
ASSOCIATION, successor to	*	
NATIONAL CITY BANK		
Plaintiff	*	
		Civil Action No. 1:10-cv-20
v.	*	
AUGUSTA APARTMENTS, LLC, a West	*	
Virginia limited liability company,		
KRISTIAN E. WARNER, BENJAMIN	*	
F. WARNER, ANDREW M. WARNER,		
and MONROE P. WARNER	*	
Defendants		
	*	*
	*	*
	*	*

**MOTION TO INTERVENE**

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF WEST VIRGINIA:

COMES NOW, First United Bank and Trust, by and through its undersigned counsel,  
Schlossberg & Associates and Roger Schlossberg, and in support of its *Motion to Intervene*,  
hereby respectfully represents as follows:

1. Your Movant First United Bank and Trust ("First United") is a Maryland banking corporation with principal offices located in Oakland, Maryland.
2. As review of the *Complaint* filed by the Plaintiff PNC Bank (hereinafter "PNC") will reveal, the same seeks, *inter alia*, the appointment of a Receiver for all of that improved real property owned by the Defendant Augusta Apartments, LLC ("Augusta") located at 49 Falling Run Road, Morgantown, West Virginia 26505 (the "Realty").
3. As hereinafter detailed, your Movant First United is the holder of a duly perfected secured lien against the Realty. As such, your Movant First United respectfully urges that

disposition of the instant proceedings in the absence of First United as a party may, as a practical matter, impair or impede First United's ability to protect its interest. Accordingly, First United respectfully urges that it is entitled to intervene as a matter of right pursuant to the provisions of Federal Rule 24(a)(2).

3. First United's interest in the Realty is predicated upon the loan by First United to the Defendant Augusta on December 13, 2006 of the principal sum of \$4,000,000.00 repayable together with interest thereon and according to those terms and conditions set forth in a *Promissory Note* and a separate *Business Loan Agreement*, both of that date (copies of which said *Promissory Note* and *Business Loan Agreement* being attached hereto and incorporated by reference as Exhibits 1 and 2, respectively). The payment and performance of the obligations of Augusta were secured by, *inter alia*, the lien of a *Credit Line Deed of Trust* dated December 19, 2008 and recorded among the Land Records of Monongalia County, West Virginia at Volume 1669, page 844 (a copy of which said *Credit Line Deed of Trust* being attached hereto and incorporated by reference as Exhibit 3). Further, certain other obligations of Augusta were secured by a *Collateral Assignment of Rents and Leases* also dated December 19, 2008 conveying unto First United a security interest in certain rents and leases derived from the Realty; which said *Collateral Assignment of Rents and Leases* is recorded among the Land Records of Monongalia County, West Virginia at Volume 0103, page 445 (a copy of which said *Collateral Assignment of Rents and Leases* being attached hereto and incorporated by reference herein as Exhibit 4).

4. As required by Federal Rule 24(c), a copy of the *Answer* proposed to be filed by First United is attached hereto and incorporated by reference herein as Exhibit 5.

WHEREFORE, your Movant First United respectfully prays that this Honorable Court:

1. GRANT the *Motion to Intervene*.
2. PERMIT First United to intervene in the instant proceedings as a party Defendant.
3. ORDER that the proposed *Answer* of First United be accepted for filing herein.
4. ORDER such other and further relief as the nature of this cause and the interests of justice may require.

Respectfully submitted,

SCHLOSSBERG & ASSOCIATES

By: /s/ Roger Schlossberg  
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Attorney for Movant

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 18<sup>th</sup> day of February, 2010, that a copy of the foregoing was served electronically to those recipients authorized to receive a Notice of Electronic Filing by the Court.

/s/ Roger Schlossberg  
Roger Schlossberg